

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC
DEBTOR

CASE NO. 10-93904
CHAPTER 11

**RESERVATION OF RIGHTS AND OBJECTION TO FIFTH INTERIM
APPLICATION OF JAMES A. KNAUER FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES AS CHAPTER 11 TRUSTEE**

Come Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Creditors”), by counsel, and hereby object on an interim basis and reserve for the final fee application all objections to the allowance of fees and expenses of James A. Knauer, Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”). In support of this Reservation of Rights and Interim Objection, the Creditors respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [Doc 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [Doc 98-1] and Affidavit of Disinterest [Doc 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc 102] in the above-captioned bankruptcy case.

2. On June 3, 2011, the Trustee filed his First Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 525] (the “First Interim

Application”). This Application was approved on an interim basis by an Interim Order of this Court entered on July 15, 2011 [Doc 605].

3. On November 10, 2011, The Trustee filed his Second Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 816] (the “Second Interim Application”). This Application was approved on interim basis by an Interim Order of this Court entered on December 21, 2011 [Doc 925].

4. On November 21, 2012, the Trustee filed his Third Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 1556] (the “Third Interim Application”). This Application was approved on interim basis by an Interim Order of this Court entered on December 20, 2012 [Doc 1667].

5. On March 20, 2013, the Trustee filed his Fourth Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 1907] (the “Fourth Interim Application”). This Application was approved on an interim basis by an Interim Order of this Court entered on October 1, 2013 [Doc 2374].

6. On October 24, 2013, the Trustee filed his Fifth Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 2402] (the “Fifth Interim Application”), which is at issue herein.

OBJECTION AND RESERVATION OF RIGHTS

7. For reasons previously stated, the Creditors continue in their objections to the allowance of fees and expenses for the Trustee on both an interim and final basis. Due to undisclosed written agreements entered into by the Trustee which significantly limited the Trustee as the sole representative of the Estate, the Trustee’s nondisclosure from the first days of

the case taints all fee applications, which remain subject to final objection and final review at the time of the filing of a final application.

8. To the extent that the Court enters an interim order approving the Fifth Interim Application, the order will not be a final approval of the fees or expenses. *See Matter of Taxman Clothing Co.*, 49, F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim awards of attorney’s fees in bankruptcy cases are tentative.”) (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) (“Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.”) (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted). The same is true of all prior interim applications.

9. Against this background, a lengthy objection to the Fifth Interim Application is not required at this interim stage. The Creditors reserve any and all rights to object to the final fee application filed by the Trustee in this Bankruptcy Case.

10. If the Court grants an interim allowance, before any payment of same, the Trustee should be ordered and directed to provide additional information to the creditor body on more current Estate information and updated estimated creditor distributions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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